

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**FIFTH AMENDED  
SCHEDULING ORDER**

**RAFAEL DIAZ,**

**Criminal No. 95-CR-10A-09 (Sr)**

**Defendant.**

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The defendant has requested additional time within which to file his pretrial motions. The government does not object. The Fourth Amended Scheduling Order which was filed on September 20, 2005, is hereby amended as follows:

- (1) All pretrial motions, both dispositive and non-dispositive, including all supporting papers and memoranda of law in support thereof, shall be filed by **November 17, 2005.**
- (2) All responses to pretrial motions, including all supporting papers and memoranda of law in support thereof, filed in accordance with the preceding paragraph shall be filed by **December 19, 2005.**
- (3) Oral argument on any pretrial motions shall be heard on **January 5, 2006, at 2:00 p.m.**
- (4) **IF NO MOTIONS ARE FILED ON OR BEFORE THE AFORESAID DATE, THE GOVERNMENT IS HEREBY ORDERED TO APPLY FOR A TRIAL DATE FROM HON. RICHARD J. ARCARA NO LATER THAN November 21, 2005.**

In accordance with the Second Circuit Speedy Trial Guidelines, Part I(C)(3)(a) and (b), and upon the authority of *United States v Piontek*, 861 F.2d 152, 154 (7th Cir., 1988); *United States v Montoya*, 827 F.2d 143, 153 (7th Cir., 1987); *United States v. Wilson*, 835 F2d 1440, 1444 (D.C. Cir., 1987); *United States v Tibboel*, 753 F.2d 608, 610 (7th Cir., 1985); and *United States v Jodoin*, 672 F.2d 232, 238 (1st Cir., 1982), the

period of time from October 18, 2005, until the date of making and/or filing of pretrial motions is excluded pursuant to 18 U.S.C. § 3161(h)(8)(A).

If no motions are filed by the filing date set forth in paragraph (2), the case shall be referred to the district court judge to whom the case is assigned for trial and the speedy trial exclusion set forth above shall terminate as of the cutoff date for the filing of motions set forth herein.

Any requests for extension of the above dates must be in strict compliance with Local Rule 12.2 of the Local Rules of Criminal Procedure for the Western District of New York, which requires written application prior to the due date, made to the courtroom deputy. Such application shall be made only after conferring with all other parties and shall include a suggested rescheduled date, agreeable to all parties. As a general rule, no request for an extension will be granted unless extraordinary circumstances are present.

Failure by any party to raise defenses or objections, or to make requests which must be made prior to trial at the time set forth in this scheduling order or prior to any extension made by the court shall constitute a waiver thereof. FedR.Crim.P. 12(f).

**SO ORDERED.**

**/s/ H. Kenneth Schroeder, Jr.**

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**H. KENNETH SCHROEDER, Jr.**  
**United States Magistrate Judge**

**DATED:      October 14, 2005**  
**Buffalo, New York**